Supreme Court, U.S.
FILED
DEC 18 2003
OFFICE OF THE CLERK

(33)

No. 02-1624

IN THE

Supreme Court of the United States

ELK GROVE UNITED SCHOOL DISTRICT
and **DAVID W. GORDEN,**
Petitioners,
v.

MICHAEL A. NEWDOW,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF LIBERTY COUNSEL, WALLBUILDERS AND WILLIAM J. FEDERER AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

Rebecca O'Dell Townsend
Haas, Dutton et al.
1901 N. 13th St., Ste. 300
Tampa, FL 33605
(813) 253-5333

Mathew D. Staver
(Counsel of Record)
Erik W. Stanley
Anita L. Staver
Joel L. Oster
Rena M. Lindevaldsen
LIBERTY COUNSEL
210 E. Palmetto Ave.
Longwood, FL 32750
(407) 875-2100

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS ..... -i-

TABLE OF AUTHORITIES ..... -iii-

INTEREST OF *AMICI* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 2

I. PUBLIC ACKNOWLEDGMENT OF GOD IS DEEPLY EMBEDDED IN THE HISTORY AND TRADITION OF THIS COUNTRY. 2

A. Our Founding Documents And Presidents Publicly Acknowledge God. 2

B. Our Founding Documents Acknowledge God. ... 13

II. PUBLIC ACKNOWLEDGMENT OF GOD IS AS NECESSARY, PROPER AND CONSTITUTIONAL TODAY AS IT WAS IN OUR NATION'S PAST. 16

A. Our Belief In God Is The Foundation Of Our Freedom. 16

B. Our Constitution Presupposes a Belief in God. ... 19

C. Our Belief In God Is The Foundation Of Our Laws 22

III. PUBLIC ACKNOWLEDGMENT OF GOD IS

NOT THE ESTABLISHMENT OF RELIGION. 23

A. The First Amendment Guarantees Freedom *Of* Religion Not Freedom *From* Religion. 24

B. Congress Did Not Attempt To Establish A Religion When It Added The Word, "Under God." 27

CONCLUSION 29

TABLE OF AUTHORITIES

CASES: **Page(s)**

Abington Sch. Dist. v. Schempp,
374 U.S. 203 (1963) 17, 21, 26, 27

Engel v. Vitale,
370 U.S. 421(1962) 8, 12, 17, 19, 24, 28

Everson v. Board of Educ.,
330 U.S. 1 (1947) 3, 4

Lee v. Weisman,
505 U.S. 577 (1992) 27

Lynch v. Donnelly,
465 U.S. 668 (1984) 3, 7, 24, 25, 26, 27

Marsh v. Chambers,
463 U.S. 783 (1983) 17, 26

McCollum v. Board of Educ.,
333 U.S. 203(1962) 13-14, 21

Rector v. Holy Trinity Church,
143 U.S. 457 (1892) 14, 15-16, 24

Wallace v. Jaffree,
472 U.S. 38 (1985) 3-7, 20-21

Walz v. Tax Comm'n. of New York City,
397 U.S. 664 (1970) 25

Stone v. Graham,
449 U.S. 39(1981) 21

Zorach v. Clauson,
343 U.S. 306(1952) 24, 25, 26

OTHER:

Annual Register of the Year, 1783 15

John Quincy Adams, *The Jubilee of the Constitution*
(New York, Samuel Colman, 1839) 22

Paul M. Angle, *By These Words*
(New York, Rand, McNally & Co.)(1954) 8-13

Sir William Blackstone, *Commentaries on the Laws of England*
(Philadelphia, Union Library, 1771) 22

President George W. Bush, *State of the Union Address*, Jan. 28, 2003,
www.washingtonpost.com (Dec. 15, 2003) 8

Harry Alonzo Cushing, ed., *The Writings of Samuel Adams*
(New York, G.P. Putnam's Sons)(1904) 15

Encarta Encyclopedia,
http://encarta.msn.com/encyclopedia (2003) 25

William J. Federer, *Three Secular Reasons Why America Should be Under God*,
Sept. 24, 2003, at http://www.townhall.com. 18

John Fiske, *The Beginnings of New England*
(Boston, Houghton, Mifflin & Co., 1898) 14

First Charter of Massachusetts, 1629, *available at*,
http://www.nhinet.org/ccs/docs/mass-1.htm 14

FLA. CONST., Preamble (2003) 16

Benjamin Franklin, *Maxims and Morals* (1789) 17

Inaugural Addresses of the Presidents of the United States (1989) 8-13

William Jay, ed., *The Life of John Jay*
(New York, J& J Harper) (1833) 22

Thomas Jefferson, *Notes on the State of Virginia*
(1781) 17

Verne Paul Kaub, *Collectivism Challenges Christianity*
(1946) 18

Charles King, ed.,*The Life and Correspondence of Rufus King*,
(New, G.P. Putnam's Sons)(1900) 23

John Locke, *Two Treatises* 22

Governor Morris, *A Diary of the French Revolution*,
April 19, 1791
(Boston, Houghton Mifflin) (1939) 20

Public Papers of the Presidents, Office of the Fed.
Reg. (2003) 13

James D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897* (U.S. Bureau of National
Literature and Art)(1910) 6, 8, 19

Jared Sparks, *The Life of Governeur Morris*, (Boston, Gray & Bowen) (1832) 20

Joseph Story, *Commentaries on the Constitution of the United States*, (Boston, Hillard, Gray & Co.) (1833) 20

Harold C. Syrett, ed., *Papers of Alexander Hamilton* (New York, Columbia Univ. Press 1961) 17, 23

Bird Wilson, ed., *The Works of the Honourable James Wilson* (Philadelphia, Lorenzo Press, 1804) *23*

John Witherspoon, *The Works of John Witherspoon*, (Edinburgh, J. Ogle) (1815) 20

INTEREST OF *AMICI*[1]

Liberty Counsel is a non-profit civil liberties education and legal defense organization. Liberty Counsel provides education and legal representation regarding the Free Speech, Free Exercise, and Establishment Clauses of the First Amendment to the United States Constitution.

WallBuilders is an organization dedicated to the preservation of the constitutional, moral and religious foundation on which America was built. The organization owns a vast collection of thousands of original documents and writings from early American history and was appointed by the State Boards of Education in States such as California and Texas to help write the American history and government standards for students in those States. WallBuilders has received numerous educational and legal awards and has participated in cases at the U.S. Supreme Court as well as lower federal and state courts.

William J. Federer is a nationally known speaker, best-selling author, and president of Amerisearch, Inc., a publishing company dedicated to research America's noble heritage. His book America's God and Country Encyclopedia of Quotations has sold over a quarter-of-a-million copies and has been acclaimed by Congressmen, Senators and national leaders.

Amici file this brief with the consent of all parties. The letters granting consent are enclosed herewith.

---

[1] Counsel for a party did not author this brief in whole or in part. No person or entity, other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

SUMMARY OF ARGUMENT

Ours is a great nation with a great religious heritage and a great religious identity that persists to this day. It is not a violation of the Establishment Clause for our school children to acknowledge our religious heritage or to share in our religious identity by reciting the Pledge of Allegiance with the words, "under God." To the contrary, the public and patriotic affirmation of God is the best of our national traditions, dating back to Christopher Columbus, continuing with our Founding Fathers, and persisting today. Our school children do not need to be shielded from our religious identity. Instead, they should be encouraged to participate in the one common thread running through our public life - belief and acknowledgment of "nature's God."

Moreover, without our belief in God, there is no foundation for our belief in the inalienable rights given by God. If our inalienable rights are not given by God, then they are given by our government and the government or even this Court can take them away. Our forefathers risked their lives, honors and fortunes to preserve what Americans believe to be the right of every man and women - the right to life, liberty and the moral pursuit of happiness. Our children have the constitutional right to share in that belief - the belief that gave birth to our great nation.

ARGUMENT

I. PUBLIC ACKNOWLEDGMENT OF GOD IS DEEPLY EMBEDDED IN THE HISTORY AND TRADITION OF THIS COUNTRY.

A. Our Founding Fathers And Presidents Publicly Acknowledged God.

Justice Berger, writing for the majority in *Lynch v.*

Donnelly, observed that "[o]ur history is replete with official references to the value and invocation of Divine guidance... ." *Lynch v. Donnelly*, 465 U.S. 668, 675 (U.S. 1984)(finding a nativity scene display constitutional). Justice Berger then announced that "[t]his Court's interpretation of the Establishment Clause comports with the contemporaneous understanding of the Framer's intent. That neither the draftsmen of the Constitution, who were Members of the First Congress, nor the First Congress itself, saw any establishment problem in employing Chaplains to offer daily prayers in the Congress is a striking example of the accommodation of religious beliefs intended by the Framers." *Lynch v. Donnelly*, 465 U.S. at 668.

Justice Rehnquist, in his dissenting opinion in *Wallace v. Jaffree*, noted that "It is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history ... ." *Wallace v. Jaffree*, 472 U.S. 38, 91 (1985). Indeed, the primary reason that any lawyer is compelled to attend law school is to grasp the historical roots, context, and progression of our common law system of justice. This historical understanding not only aids lawyers and courts in understanding how we arrived at our current state of the law, but provides an understanding of why we arrived there. Unfortunately, as Justice Rehnquist noted in his dissent, the Establishment Clause has suffered under a mistaken understanding of its constitutional history, rendering Establishment Clause jurisprudence unsound. *Id.* at 91.

According to Justice Rehnquist, the Court's mistaken understanding of the constitutional history of the Establishment Clause emanates from "Jefferson's misleading metaphor" that the Establishment Clause was intended to erect a "wall of separation between church and State." *Id.*, citing *Everson v. Board of Educ.*, 330 U.S. 1 (1947). After noting that Jefferson was in France at the time that the Bill of Rights were passed by Congress and ratified by the States, and that Jefferson's

statement was made in a "short note of courtesy," Justice Rehnquist gives a comprehensive history of the proposal, debate, enactment and ratification of the Establishment Clause. *See Wallace*, 472 U.S. at 92-98 (citations omitted).

Within his discussion, Justice Rehnquist noted that the First Congress enacted the Northwest Ordinance to govern the Northwest Territory on the same day that the Bill of Rights were proposed. *Id.* at 100. The Northwest Ordinance provided that "[r]eligion, morality, and knowledge, being necessary to good government and happiness of mankind, schools and means of education shall forever be encouraged." *Id.* Justice Rehnquist also noted that land grants for schools to the Northwest Territory were not limited to public schools. *Id.* (citation omitted). "It seems highly unlikely," opined Justice Rehnquist, "that the House of Representatives would simultaneously consider proposed amendments to the Constitution and enact an important piece of territorial legislation which conflicted with the intent of those proposals." *Id.* (citation omitted).

Instead, concluded Justice Rehnquist, "[i]t would seem from the evidence that the Establishment Clause of the First Amendment had acquired a well-accepted meaning: it forbade the establishment of a national religion, and forbade preference among religious sects or denominations. ... The Establishment Clause did not require government neutrality between religion and irreligion nor did it prohibit the Federal Government from providing nondiscriminatory aid to religion. There is simply no historical foundation for the proposition that the Framers intended to build the 'wall of separation' that was constitutionalized in *Everson*. *Id.* (referring to *Everson v. Board of Educ.*, 330 U.S. 1 (1947)).

Also within his dissent, Justice Rehnquist noted that the joint houses of Congress proposed and ratified a resolution

asking President George Washington to issue a Thanksgiving Day Proclamation as an opportunity for United States citizens to return "to Almighty God their sincere thanks for the many blessings he had poured down upon them" the day after enacting the Bill of Rights. *Id.*, citing 1 *Annals of Cong.* 914 (1789). Justice Rehnquist took particular note that the Representatives that favored the proclamation also favored the Bill of Rights, while one Representative on record as opposing the proclamation also voted against the adoption of the Bill of Rights. *Wallace*, 472 U.S. at 100. Within two weeks, as Justice Rehnquist noted, George Washington recommended and assigned November 26th,

> "to be devoted by the people of these States to the service of that great and glorious Being who is the beneficent author of all the good that was, that is, and that will be; that we may than all unite in rendering unto Him our sincere and humble thanks for His kind care and protection of the people of this country precious to their becoming a nation; for the signal and manifold mercies and the favorable interpositions of His providence in the course and conclusion of the late war; for the great degree of tranquility, union, and plenty which we have since enjoyed; for the peaceable and rational manner in which we have been enabled to establish constitutions of government for our safety and happiness, and particularly the nation one now lately instituted; for the civil and religious liberty with which we are blessed ... And also that we may unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations, and beseech Him to pardon our national and other transgressions; ... to render our National Government a blessing to all the

> people by constantly being a Government of wise, just, and constitutional laws, ... to protect and guide all sovereigns and nations ... and to bless them with good governments, peace, and concord; to promote the knowledge and practice of true religion and virtue, and the increase of science among them and us, and generally, to grant unto all mankind such a degree of temporal prosperity as He alone knows to be best." *Id.*, citing James Richardson, *Messages and Papers of the Presidents*, 1789-1897, p. 64 (Washington, 1897).

Similar proclamations have been made by our Presidents throughout our history. John Adams declared in 1799, "As no truth is more clearly taught in the Volume of Inspiration, nor any more fully demonstrated by the experience of all ages, than that a deep sense and due acknowledgment of the governing providence of a Supreme Being and of the Accountableness of men to Him as the searcher of heart and righteous distributor of rewards and punishments are conducive equally to the happiness and rectitude of individuals and to the well-being of communities ... I do hereby recommend ... to be observed throughout the United States as a day of solemn humiliation, fasting, and prayer... ." *Id.* James Monroe, on July 9, 1812 proclaimed that the third Thursday in August "be set apart for the devout purposes of rendering the Sovereign of the Universe and the Benefactor of Mankind the public homage due to His holy attributes... ." *Id.* President James Madison, on March 4, 1815 declared a day of thanksgiving and "of devout acknowledgments to Almighty God for His great goodness manifested in restoring them the blessing of peace." *Id.* Madison declared that "No people ought to feel greater obligations to celebrate the goodness of the Great Disposer of Events and of the Destiny of Nations than the people of the United States for His kind providence." *Id.* Andrew Johnson

proclaimed that "a special period be assigned for again humbling ourselves before Almighty God ... on the occasion of the "obsequies of Abraham Lincoln, late President of the United States." *Id.* President Woodrow Wilson, on October 19, 1917, proclaimed that "Whereas the Congress of the United States, ... requested me to set apart by official proclamation a day upon which our people should be called upon to offer concerted prayer to Almighty God for His divine aid ... And whereas it behooves a great free people, nurtured as we have been in eternal principles of justice and of right, a nation which has sought from the earliest days of its existence to be obedient to the divine teachings which have inspired it in the exercise of its liberties, to turn always to the supreme Master and place themselves in faith at His feet, praying for His aid and succor ... ." *Id.*

President Roosevelt's 1944 Thanksgiving Proclamation declared: "[I]t is fitting that we give thanks with special fervor to our Heavenly Father for the mercies we have received individually and as a nation and for the blessings He has restored, through the victories of our arms and those of our Allies, to His children in other land ... To the end that we may bear more earnest witness to our gratitude to Almighty God, I suggest a nationwide reading of the Holy Scriptures during the period from Thanksgiving to Christmas." *Lynch v. Donnelly*, 668 U.S. at 675 n. 3, citing 9 Fed. Reg. 13,099(1944).

Contrary to those who espouse the view that our Nation is so changed that constitutional history is irrelevant or anecdoctal - it appears from these Presidential proclamations that little has, in fact, changed. They are as applicable today and as likely to come from the lips of our present President as they were over 200 years ago.

In President Bush's 2003 State of the Union address, he ended with these words:

Americans are a free people, who know that freedom is the right of every person and the future of every nation. The liberty we prize is not America's gift to the world; it is God's gift to humanity.

We Americans have faith in ourselves, but not in ourselves alone. We do not claim to know all the ways of Providence, yet we can trust in them, placing our confidence in the loving God behind all of life and all of history. May He guide us now, and may God continue to bless the United States of America." President George W. Bush, *State of the Union Address*, January 28, 2003, www.washingtonpost.com (Dec. 15, 2003).

Every President of the United States, since Washington, has taken the Oath of Office with his hand placed upon the Bible. *Engle v. Vitale*, 370 U.S. 421, 436 (1962). Every President has ended his Oath with, "So help me, God." *Id.* At 436. Every President, without exception, has acknowledged God upon entering office:

George Washington, 1st, "... that Almighty Being who rules over the universe..." Paul M. Angle, ed., *By These Words*, Washington's First Inaugural Address, April 30. 1789, p.185 (1954), citing James D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897* (Washington, 1899), VI, pp. 445-59;

John Adams, 2nd, "... that Being who is supreme over all, the Patron of Order, the Fountain of Justice..." *Inaugural Addresses of the Presidents of the United States* (1989);

Thomas Jefferson, 3rd, "And may that Infinite Power which rules the destinies of the universe lead our councils to what is best, and give them a favorable issue for your peace and prosperity." Angle, Jefferson's First Inaugural Address, March 4, 1801, p.226 (1954); *Lee v. Weisman*, 505 U.S. 577, 634 (1992), citing *Inaugural Addresses of the Presidents*, S. Doc. 101-10, p. 17;

James Madison, 4th, "... that Almighty Being whose power regulates the destiny of nations, whose blessings have been so conspicuously dispensed to this rising Republic, and to whom we are bound to address our devout gratitude for the past, as well as our fervent supplications and best hopes for the future." *Lee v. Weisman*, 505 U.S. at 634, citing *Inaugural Addresses* at p. 28;

James Monroe, 5th, "... with a firm reliance on the protection of Almighty God..." *Inaugural Addresses*;

John Quincy Adams, 6th, "... knowing that 'Except the Lord keep the city, the watchman waketh in vain'..." *Id.*;

Andrew Jackson, 7th, "... my fervent prayer to that Almighty Being before whom I now stand..." *Id.*;

Martin Van Buren, 8th, "... that Divine Being whose strengthening support I humbly solicit..." *Id.*;

William Henry Harrison, 9th, "... the Beneficent Creator has made no distinction amongst men..." *Id.*;

John Tyler, 10th, "... the all-wise and all-powerful Being who made me..." *Id.*;

James Polk, 11th, "... in their worship of the Almighty according to the dictates of their own conscience..." *Id.*;

Zachary Taylor, 12th, "... to which the goodness of Divine Providence has conducted our common country..." *Id.*;

Millard Fillmore, 13th, "... it has pleased Almighty God to remove from this life Zachary Taylor..." *Id.*;

Franklin Pierce, 14th, "... humble, acknowledged dependence upon God and His overruling providence..." *Id.*;

James Buchanan, 15th, "In entering upon this great office I must humbly invoke the God of our fathers..." *Id.*;

Abraham Lincoln, 16th, "Intelligence, patriotism, Christianity, and a firm reliance on Him, who has never yet forsaken this favored land, are still competent to adjust, in the best way, all our present difficulty." Angle, *By These Words*, Lincoln's First Inaugural Address, March 4, 1861 at 305.

Andrew Johnson, 17th, "... grief on earth which can only be assuaged by communion with the Father in heaven..." *Inaugural Addresses*;

Ulysses S. Grant, 18th, "I do believe that our Great Maker is preparing the world, in His own good time..." *Id.*;

Rutherford B. Hayes, 19th, "... guidance of that Divine Hand by which the destinies of nations and individuals are shaped..."*Id.*;

James Garfield, 20th, "... their fathers' God that the Union was preserved, that slavery was overthrown..." *Id.*;

Chester Arthur, 21st, "I assume the trust imposed by the Constitution, relying for aid on Divine Guidance..." *Id.*;

Grover Cleveland, 22nd, "... the power and goodness of Almighty God who presides over the destiny of nations..." *Id.*;

Benjamin Harrison, 23rd, "... invoke and confidently extend the favor and help of Almighty God - that He will give me wisdom..." *Id.*;

Grover Cleveland, 24th, "I know there is a Supreme Being who rules the affairs of men and whose goodness and mercy have..."

William McKinley, 25th, "Our faith teaches that there is no safer reliance than upon the God of our fathers..." *Id.*;

Theodore Roosevelt, 26th, "... with gratitude to the Giver of Good who has blessed us with the conditions which have enabled us..." *Id.*;

Howard Taft, 27th, "... support of my fellow-citizens and the aid of the Almighty God in the discharge of my responsible duties..." *Id.*;

Woodrow Wilson, 28th, "I summon all honest men, all patriotic men, all forward-looking men, to my side. God helping me, I will not fail them, if they will but counsel and sustain me!" Angle, *By These Words*, Wilson's First Inaugural Address, March 4, 1913 at 423.

Warren G. Harding, 29th, "... that passage of Holy Writ wherein it is asked: "What doth the Lord require of thee..." *Inaugural Addresses*;

Calvin Coolidge, 30th, "[America] cherishes no purpose save to merit the favor of Almighty God..." *Id.*;

Herbert Hoover, 31st, "I beg your tolerance, your aid,

and your cooperation. I ask the help of Almighty God..." *Id.*;

Franklin D. Roosevelt, 32nd, "In this dedication of a nation we humbly ask the blessing of God..." *Id.*,

Harry S. Truman, 33rd, "... all men are created equal because they are created in the image of God..." *Id.*;

Dwight D. Eisenhower, 34th, "At such a time in history, we who are free must proclaim anew our faith. This faith is the abiding creed of our fathers. It is our faith in the deathless dignity of man, governed by eternal moral and natural laws. This faith defines our fill view of life. It establishes, beyond debate, those gifts of the Creator that are man's inalienable rights, and that make all men equal in His sight ... The enemies of this faith know no god but force, no devotion but its use... Whatever defies them, they torture, especially the truth. Here, then, is no argument between slightly differing philosophies. This conflict strikes directly at the faith of our fathers and the lives of our sons... This is the work that awaits us all, to be done with bravery, with charity, and with prayer to Almighty God." Angle, *By These Words*, Eisenhower's Inaugural Address, January 20, 1953 at 532.

John F. Kennedy, 35th, "... the rights of man come not from the generosity of the state but from the hand of God..." *Engle v. Vitale*, 370 U.S. at 448.

Lyndon B. Johnson, 36th, "... the judgement of God is harshest on those who are most favored..." *Inaugural Addresses*;

Richard M. Nixon, 37th, "... as all are born equal in dignity before God, all are born equal in dignity before man..."*Id.*;

Gerald Ford, 38th, "... to uphold the Constitution, to do what is right as God gives me to see the right..." *Id.*;

Jimmy Carter, 39th, "...what does the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God..." *Id.*;

Ronald Reagan, 40th, "... one people under God, dedicated to the dream of freedom that He has placed in the human heart..."*Id.*;

George Bush, 41st, "Heavenly Father, we bow our heads and thank You for Your love..." *Id.*;

Bill Clinton, 42nd, "... with God's help, we must answer the call..." *Id.*;

George W. Bush, 43rd, "... this story's Author, Who fills time and eternity with His purpose..." *Id.*

It is constitutional for school children to read and hear Presidents' speeches, including their acknowledgment of God, because the Constitution does not demand neutrality toward religion. In fact, as demonstrated by our constitutional history, our Founding Fathers intended our government to encourage religion over non-religion. As President Franklin D. Roosevelt said, "In teaching this democratic faith to American children, we need the sustaining, buttressing aid of those great ethical religious teachings which are the heritage of our modern civilization. For 'not upon strength nor upon power, but upon the spirit of God" shall our democracy be founded." *Public Papers of the Presidents*, F.D. Roosevelt, 1940, Item 149, Office of Fed. Reg. (2003).

B. Our Founding Documents Acknowledge God.

Christopher Columbus set sail "by the Grace of God" with the "hope that by God's assistance some of the continents

and islands in the oceans will be discovered." *Rector v. Holy Trinity Church*, 143 U.S. 457, 465 (1892). Virginia's first charter granted by King James I commenced with the words: "We, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of Christian Religion to such People, as yet live in Darkness and miserable Ignorance of the true knowledge and Worship of God, and may in time bring ... a settled and quiet Government ... ." *Id.* at 465. The Mayflower Compact recites, "Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of King and Country, a Voyage to plant the first Colony in the northern parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body ... ." *Id.* The Massachusetts 1629 charter declared, "[O]ur said people ... be so religiously, peaceable, and civilly governed their good life and orderly conversation may win and incite the natives ... to the knowledge and obedience of the only true God and Savior of mankind, and the Christian faith, which ... is the principal end of this plantation." *First Charter of Massachusetts*, 1629, *available at* http://www.nhinet.org/ccs/docs/mass-1.htm. In the charter of privileges granted William Penn to Pennsylvania in 1701, it is recited, "Because no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of Conscience, as to their Religious Profession and Worship; And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith, and Worship, who only doth enlighten the Minds, and persuade and convince the Understandings of People, I do hereby grant and declare ... ." *Rector v. Holy Trinity Church*, 143 U.S.457, 465 (1892). The Fundamental Orders of Connecticut explained that the document had been created, "[W]ell knowing when a people are gathered together, the word of God requires that to maintain

the peace and union of such a people, there should be an orderly and decent government established according to God." John Fiske, *The Beginnings of New England*, pp. 127-28 (Boston, Houghton, Mifflin & Co., 1898).

Our Declaration of Independence recognizes the presence of the Divine in human affairs in the words, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." *Holy Trinity*, 143 U.S. at 465. "We, therefore, the Representative of the united States of America, ... appealing to the Supreme Judge of the world ... do, ... with firm reliance on the Protection of Divine Providence, ... pledge to each other our Lives, our Fortunes, and our sacred Honor." *Id.*

The Manifesto of the Continental Congress appealed, "to the God who searcheth the hearts of men for the rectitude of our intentions; and in His holy presence declare that, as we are not moved by any light or hasty suggestions of anger or revenge ... adhere to this our determination." Samuel Adams, "Manifesto of Continental Congress, October 1778, *The Writings of Samuel Adams*, Vol. IV, p. 86, Harry Alonzo Cushing, ed. (New York, G.P. Putnam's Sons)(1904).

The formal peace treaty with Great Britain, signed by John Adams, Benjamin Franklin, and John Jay on September 8, 1783, in its opening line invoked God with the words, "In the name of the most holy and undivided Trinity." *Annual Register for the Year 1783*, p. 113.

Every constitution of the various states contains language recognizing, either by directly or by clear implication, a profound reverence for religion and an assumption of its influence in all human affairs and as essential to the well-being of the community. *Holy Trinity*, 143 U.S. at 468. Illinois' constitution, adopted in 1870, declares, "We, the people of the state of Illinois, grateful to Almighty God for the civil, political, and religious liberty which He hath so long permitted us to

enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations ... ." *Id.* Massachusetts' Constitution, adopted in1780, states that, "It is the right as well as the duty of all men in society publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe... as the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, morality, ..." *Id.* at 469. Mississippi's Constitution, adopted in 1832, states that "Religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education shall forever be encouraged in this state." Florida's Constitution, adopted in1885, recites, "We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution." FLA. CONST., Preamble (2003).

"There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons. They are organic utterances. They speak the voice of the entire people. *Holy Trinity*, 143 U.S. at 470. Is it, then, unconstitutional to require our children to read these historic documents, these current constitutions, our President's current speeches and proclamations, our currency, or to recite our Pledge of Allegiance? Or as this Court phrased it, "In the face of all these, shall it be believed that a congress of the United States intended ... it to be unconstitutional for school children to utter 'under God?'" *Id.* at 471.

II. PUBLIC ACKNOWLEDGMENT OF GOD IS AS NECESSARY, PROPER AND CONSTITUTIONAL TODAY AS IT WAS IN OUR NATION'S PAST

A. Our Belief in God Is The Foundation Of Our Freedom.

Justices of this Court have expressed the opinion that the constitutional history of the Establishment Clause no longer dictates Establishment Clause jurisprudence because our Nation has changed demographically. *See Marsh v. Chambers*, 463 U.S. 783, 817 (1983)(dissenting opinion)(citing *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 240-41 (1963)(concurring opinion)). This reasoning does not, however, negate the importance of the public acknowledgment of God in the preservation of our constitutional liberties. As our Founding Fathers articulated in the Declaration of Independence, inalienable individual rights come from a power higher than the government. If they do not, then those rights are not inalienable and the government can extinguish those rights. Our Nation was founded upon the premise that God granted certain rights to mankind and that government's rightful purpose is to protect those rights.

As John F. Kennedy stated in his Inaugural Address, "The rights of man come not from the generosity of the state, but from the hand of God." *Engle v. Vitale*, 370 U.S. at 446. Benjamin Franklin wrote, "Freedom is not a gift bestowed upon us by other men, but a right that belongs to us by the laws of God." Benjamin Franklin, *Maxims and Morals* (1789). Thomas Jefferson, whom this Court has credited with the "separation of church and state" metaphor, exhorted, "[It is] God who gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are a Gift of God?" Thomas Jefferson, *Notes on the State of Virginia* (1781). Alexander Hamilton explained, "Our government rests upon religion. It is from that source that we derive our reverence for truth and justice, for equality and liberty, and for the rights of mankind. Unless the people believe in these principles they cannot believe in our government." Harold C. Syrett, ed., *Papers of Alexander Hamilton* (New York, Columbia Univ.

Press 1961)

Centuries later, Calvin Coolidge stated, "Natural liberty is a gift of the beneficient Creator, to the whole human race; and that civil liberty is founded in that; and cannot be wrested from any people, without the most manifest violation of injustice." President Calvin Coolidge, Washington D.C., October 15, 1924. President Herbert Hoover agreed, when he stated, "Our founding fathers did not invent the priceless boon of individual freedom and respect for the dignity of men. That great gift to mankind sprang from the Creator and not from governments." More recently, President Reagan exhorted, "History comes and goes, but principles endure and ensure future generations to defend liberty - not a gift of government, but a blessing from our Creator." Ronald Reagan, Presidential Medal of Freedom Ceremony (1993). Most recently, President Bush agreed with his predecessors by proclaiming, "Liberty is not America's gift to the world, it is God's gift to humanity." George W. Bush, State of the Union Address (Jan. 28, 2003).

One contemporary commentator has observed, "if there is no God, were can the rights come from except from the 'generosity of the State?' The State, then, becomes the new god. And what the State 'giveth,' the State can 'taketh awayeth.'" William J. Federer, *Three Secular Reasons Why America Should be Under God,* Sept. 24, 2003, at http://www.townhall.com. Another modern commentator wrote, "Look closely at these self-evident truths, these imperishable articles of American Faith upon which our government is firmly based. First and foremost is the existence of God. Next comes the truth that all men are equal in the sight of God. Third is the fact of God's great gift of unalienable rights to every person on earth. Then follows the true and single purpose of all American Government, namely, to preserve and protect these God-made rights of God-made man." *Id.*, Clarence E. Manion, Notre Dame College of Law Professor of Constitutional Law and Dean, quoted by Verne Paul Kaub, *Collectivism Challenges Christianity* (1946).

In this Nation, the irreligious enjoy the same God-given, inalienable rights as the religious. That is the true meaning of the Establishment and Equal Protection Clauses. What these clauses do not grant is freedom *from* religion or *from* the religious. It is the fabric of our Constitution and of our society. To attempt to strip all vestiges of religion and religious affirmation from public, political or educational fora is to strip our Constitution and our society of its foundation. As President Kennedy exhorted, "The world is very different now. ... And yet the same revolutionary beliefs for which our forebears fought are still at issue around the globe - the belief that the rights of man come not from the generosity of the state but from the hand of God. With good conscience as our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own." *Engel v. Vitale*, 370 U.S. at 448 (dissenting opinion)(discussing quotes from Presidents Washington, Adams, Jefferson, Madison, Lincoln, Cleveland, Wilson, Roosevelt, Eisenhower and Kennedy).

It cannot be unconstitutional for America's children to be reminded of the divine source of America's Rights, Laws and Nation. If it is, then God help us.

B. Our Constitution Presupposes A Belief In God.

President John Adams stated in a letter to the Third Division of the Militia of Massachusetts on October 11, 1798: "Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other." Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897.* Robert Winthrop, U.S. Speaker of the House in 1849 stated: "All societies of men must be governed in some way or other. ... Men, in a word, must necessarily be controlled either by a power within them, or a power without them; either by the word of God, or by the strong

arm of man." It should be axiomatic that the "strong arm of man," in a civilized society, would equal the strong arm of the government.

"For avoiding the extremes of despotism or anarchy ... the only ground of hope must be on the morals of the people." Governor Morris, Penman and Signer of the Constitution, *A Diary of the French Revolution*, Vol II, p. 172, April 19, 1791 (Boston, Houghton Mifflin)(1939) " I believe that religion is the only solid base of morals and that morals are the only possible support of free governments." Morris, *Diary*, Vol II, p. 452 to Lord George Gordon, June 12, 1792. "Religion is the only solid basis for good morals; therefore education should teach the precepts of religion and the duties of man towards God." Jared Sparks, *The Life of Governeur Morris*, Vol. III, p. 483 from Morris' "Notes on the Form of the Constitution of France" (Boston, Gray & Bowen)(1832).

"The promulgation of the great doctrines of religion; the being and attributes and providence of one Almighty God; the responsibility to Him for all actions; founded upon moral freedom and accountability; a future state of rewards and punishments; the cultivation of personal, social, and benevolent virtues; - these can never be a matter of indifference in any well-ordered community. It is, indeed, difficult to conceive how any civilized society can well exist without them." Joseph Story, U.S. Supreme Court Justice, "Father of American Jurisprudence," *Commentaries on the Constitution of the United States*, Vol. III, pp. 722-723 (Boston, Hillard, Gray & Co.)(1833). "It yet remains a problem to be solved in human affairs whether any free government can be permanent where no public worship of God and the support of religion constitute no part of the policy or duty of the state in any assignable shape." *Id.* at 727. "God grant that in America true religion and civil liberty may be inseparable and that the unjust attempts to destroy the one may in the issue tend to the support and establishment of both." John Witherspoon, Signer of the Declaration, *The Works of John Witherspoon*, Vol IX, p. 231

(Edinburgh, J. Ogle)(1815).

Chief Justice Burger, in his dissenting opinion in *Wallace v. Jaffree* noted Justice Goldberg's previous observation that the "untutored devotion to the concept of neutrality" can lead to results which are not simply "noninterference" with the religious, which the Constitution demands, "but of a brooding and pervasive dedication to the secular and a passive, or even active, hostility to the religious." *Wallace v. Jaffree*, 472 U.S. at 86(finding Alabama's school prayer statute unconstitutional)(dissenting opinion), quoting *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 306 (1963)(concurring opinion). According to Justices Burger and Goldberg, "Such results are not only *not* compelled by the Constitution, but, ... are prohibited by it." *Wallace*, 472 U.S. at 86 (emphasis added), quoting *Schempp*, 374 U.S. at 306. Justice Burger then asks and answers the question before this Court today.

"Congress amended the statutory Pledge of Allegiance 31 years ago to add the words, 'under God.' Do the several opinions in support of the judgment today render the Pledge unconstitutional? ... Any such holding would of course make a mockery of our decisionmaking in Establishment Clause cases." *Wallace*, 472 U.S. at 88, citing Act of June 14, 1954, Pub.L. 396, 68 Stat. 249. The Court, according to Justice Berger, "has ignored the wise admonition of Justice Goldberg that "the measure of constitutional adjudication is the ability and willingness to distinguish between the real threat and mere shadow." *Wallace*, 472 U.S. at 89, citing *Schempp*, 374 U.S. at 308.

As Justice Rehnquist wrote in this dissent in *Stone v. Graham*, "nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences ... ." *Stone v. Graham*, 449 U.S. 39, 46 (1981), quoting *McCollum v. Board of Educ.*, 333 U.S. 203, 235-36 (1962)(concurring opinion). As this Court has noted

repeatedly, "religion has been closely identified with our history and government." *Id.* at 46, citing *Schempp*, 374 U.S. at 212. "The Establishment Clause does not require that the public sector be insulated from all things which may have a religious significance or origin." *Id.* at 45-46.

It is clear that our Founding Fathers and those who drafted, debated, ratified and interpreted our Constitution, saw the Constitution fit only to govern a religious people. If this Court is determined to strip the American people of their great religious heritage and identity, how then shall we stand? And what is the benefit of this great religious inheritance and religious identity if we are forbidden from passing the blessing onto our children through our public educational institutions? Is it permissible to compel school children to read our great historical documents with their lengthy expositions on the attributes and blessings of God, but impermissible to have our children utter, "under God" in our Pledge of Allegiance?

C. Our Belief In God Is The Basis Of Our Laws.

"Man, considered as a creature, must necessarily be subject to the laws of his Creator ... Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these." Sir William Blackstone, *Commentaries on the Laws of England*, Vol. I, pp. 42 (Philadephia, Union Library)(1771). "The Law of Nature as an eternal rule to all men, legislators, as well as others. The rules that they make for other men's actions must ... be conformable to the Law of Nature, i.e. to the will of God. Laws human must be made according to the general laws of Nature, and without contradiction to any positive law of Scripture, otherwise they are ill made." John Locke, *Two Treatises*, Book II, p. 285. "'The laws of nature and of nature's God' ... of course presupposes the existence of God, the moral ruler of the universe, and a rule of right and wrong, of just and unjust, binding upon man, preceding all institutions of human society

and of government." John Quincy Adams, *The Jubilee of the Constitution*, pp. 13-14 (New York, Samuel Colman, 1839). "The ... natural law was given by the Sovereign of the Universe to all mankind." John Jay, First Chief Justice, *The Life of John Jay*, Vol II, p. 385, William Jay, editor (New York, J& J Harper, 1833). "The ... law established by the Creator, which has existed from the beginning, extends over the whole globe, is everywhere and at all times binding upon mankind ... [This] law is the law of God by which he makes his way known to man and is paramount to all human control." Rufus King, Signer of the Constitution, *The Life and Correspondence of Rufus King*, Charles King, editor, Vol. VI, p. 276 (New, G.P. Putnam's Sons 1900). "God ... is the promulgator as well as the author of natural law." James Wilson, signer of the Constitution, U.S. Supreme Court Justice, *The Works of the Honourable James Wilson*, Bird Wilson, editor, Vol I, p. 64(Philadelphia, Lorenzo Press, 1804).

"All [laws], however, may be arranged in two different classes: (1) Divine. (2) Human ... But it should always be remembered that this law, natural and revealed, made for men or for nations, flows from the same Divine source: it is the law of God ... Human law must rest its authority ultimately upon the authority of that law which is Divine." James Wilson, *The Works of the Honourable James Wilson* at Vol. I, pp. 103-105. "No human laws are of any validity if contrary to [the law dictated by God Himself]." Alexander Hamilton, Signer of the Constitution, *Papers of Alexander Hamilton*, Harold C. Syrett, editor, Vol. I, pp. 87 (New York, Columbia Univ. Press 1961), quoting William Blackstone, *Commentaries on the Laws of England* at Vol I, p. 41.

The founders of our legal system and of our political system undeniably set this great nation on its course with the firm conviction that it could succeed only with God's help and with a belief in and an acknowledgment of that help. Both our legal system and our Constitution were established to govern a religious people. To detach our Constitution from its moorings

is to set it adrift on a course not unknown. Many nations have put their confidence in human wisdom and secularism - only to lose their freedom and dignity. Cuba comes to mind immediately.

III. PUBLIC ACKNOWLEDGMENT OF GOD IS NOT THE ESTABLISHMENT OF RELIGION.

A. The First Amendment Guarantees Freedom *of* Religion Not Freedom *from* Religion.

We are a religious, not secular, people and our institutions, as instruments of democracy and an extension of the people, reflect that element of public life. *See Rector v. Holy Trinity Church*, 143 U.S. at 465 (stating that "no purpose of action against religion can be imputed by any legislation, state or national, because this is a religious people."); *Lynch v. Donnelly*, 465 U.S. at 675, quoting *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). This Court opens each session with "God save the United States and this Honorable Court." *Zorach v. Clauson*, 343 U.S. at 313. Our U.S. Legislature opens each daily session with prayer. *Id.* The very chamber in which oral arguments are heard before this Court "is decorated with a notable and permanent - not seasonal - symbol of religion: Moses with Ten Commandments." *Lynch v. Donnelly*, 465 U.S. at 1361.

Our national monuments and government buildings are equally adorned with religious texts and references to God. Our National holidays ("holy days") include Christmas (Christ Mass), Thanksgiving and the National Day of Prayer. *Lynch v. Donnelly*, 465 U.S. at 1361, citing 36 U.S.C. § 169h. Our cities bear religious names, such as St. Petersburg, San Francisco, Los Angeles, St. Paul, St. Augustine, Santa Barbara, Santa Clara, San Diego, Santa Fe ("Holy Faith"). Our national motto is "In

God We Trust, " which Congress mandated for our currency. *Lynch v. Donnelly*, 465 U.S. at 1361, citing 36 U.S.C. §§ 186, 324; *Engel v. Vitale*, 370 U.S. 421, 440-41 n.5 (1962). Our national anthem resounds, "Blest with victory and peace may the heaven rescued land, Praise the power hath made and preserved us a nation! Then conqurer we must when our cause it is just, And this be our motto - 'In God is our trust.'" *Id.* at 441. Our most beloved and poignant patriotic songs, such as "God Bless America" affirm our belief in God. Our most prestigious universities and colleges were founded by Christian denominations, for the propagation of the Gospel. Art galleries subsidized by public revenues display religious paintings. *Lynch v. Donnelly*, 465 U.S. at 1361.

Our president takes an oath of office with one hand placed upon the Bible. Our courtrooms include the oath, "so help me God." *Zorach v. Clauson*, 343 U.S. at 313. Our churches and clergymen enjoy tax exemptions and favor. *Walz v. Tax Comm'n of New York City*, 397 U.S. 664 (1970). Our religious donations are tax deductible.

Our children celebrate St. Valentine's Day and St. Patrick's Day in school. St. Valentine was a Christian martyr. St. Patrick was a Catholic bishop. St. Patrick, *Encarta Encyclopedia*, http://encarta.msn.com/encyclopedia (2003). The three leaf clover represents the Holy Trinity. *Id.* "Santa Claus" is derived from St. Nicholas ("Santa" means "saint" and "Claus" is short for "Nicolaus), the archbishop of Myra, known for distributing his inherited wealth to the needy by anonymously throwing bags of gold coins through windows. Santa Claus, *Encarta Encyclopedia*, http://encarta.msn.com/encyclopedia (2003).

"Government has long recognized, even subsidized, holidays with religious significance." *Lynch v. Donnelly*, 465 U.S. at 674. None of these public affirmations or governmental

favors granted to religion and to religious people have led to an Establishment of Religion in violation of the Establishment Clause. To the contrary, our Nation has enjoyed a long history of religious freedom and diversity.

Having our children recite the Pledge of Allegiance, with its public affirmation of God, does not violate the Establishment Clause anymore than having our children hear or sing the National Anthem before sporting events. Instead, it includes our children in our national identity and heritage, an identity and heritage that includes acknowledgment of God as the author and the One who bestows our inalienable rights and freedoms.

The mention of God is not a danger from which we need to shield our children. Neither is it a part of our heritage from which we need to guard our children. To the contrary, it is a proud and vibrant part of our Nation, past and present. "When the state encourages religious instruction or cooperates with religious authorities ... it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service of their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that government show callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe." *Zorach v. Clauson*, 343 U.S. at 313-14.

To attempt to eliminate public acknowledgment of God in our Nation and in our schools would require the extremes taken by Marxist nations. We would need to rename our cities, our institutions, our holidays, change our currency, change our pledge of allegiance, deface our public buildings. But we are not a Marxist people, although we certainly have Marxist citizens. And we are not a secular people, although we have secular citizens. "We are a religious people whose institutions

presuppose a Supreme Being." *Lynch v. Donnelly*, 465 U.S. at 674, quoting *Zorach v. Clauson*, 343 U.S. at 313; *Schempp*, 374 U.S. at 213. "Our history is replete with official references to the value and invocation of Divine guidance ... ." *Lynch v. Donnelly*, 465 U.S. at 674.

Some Justices of this honorable Court have suggested that these public acknowledgments of God are acceptable because they have been secularized. *See Marsh v. Chambers*, 463 U.S. at 818 (dissenting opinion), citing *Schempp*, 374 U.S. at 203-04. This reasoning, however, ignores that these religious acknowledgments only acquired a secondary secular meaning because of their long history of official public acknowledgment. Christmas, Thanksgiving, oaths, and mottos such as "One Nation under God" did not begin their public life as secular events. Only through the "unbroken history of official acknowledgment by all three branches of government" has secular secondary meaning had an opportunity to evolve. (quoting *Lynch v. Donrelly*, 465 U.S. at 674).

Moreover, these Justices assert that these mottos and expressions have lost any true religious significance. *Marsh*, 463 U.S. at 818, citing *Schempp*, 374 U.S. at 203-04. The *Lynch* majority disagreed when it wrote, "[Thanksgiving] has not lost its theme of expressing thanks for Divine aid any more than has Christmas lost its religious significance." *Lynch v. Donnelly*, 465 U.S. at 675.

Official announcements proclaiming Christmas, Thanksgiving, and other national holidays are, to this day, made in religious terms. President Bush, in his 2002 Thanksgiving Day Proclamation, declared that, "During these extraordinary times, we find particular assurance from our Thanksgiving tradition, which reminds us that we, as a people and individually, always have reason to hope and trust in God, ... As we recover from the terrible tragedies of September 11,

Americans of every belief and heritage give thanks to God for the many blessings we enjoy as a free, faithful, and fair-minded land... May Almighty God, who is our refuge and our strength in this time of trouble, watch over our homeland, protect us, and grant us patience, resolve, and wisdom in all that is to come."

We are a religious nation. It is our identity. "To deprive our society of that important unifying mechanism, in order to spare the nonbeliever what seems to me the minimal inconvenience of ... respectful nonparticipation, is as senseless in policy as it is unsupported in law." *Lee v. Weisman*, 505 U.S. at 646 (Scalia dissenting, Rehnquist, White, Thomas joining).

B. Congress Did Not Attempt To Establish A Religion When It Added The Word, "Under God" To The Pledge.

When Congress passed the bill adding the words "under God," Congress stated its belief that "those words in no way run contrary to the First Amendment but recognize 'only the guidance of God in our national affairs.'" *Engel v. Vitale*, 370 U.S. at 440 n.5 (concurring opinion), citing U.S. Code Cong. And Adm. News, 1954, p. 2341. "It is true," Congress acknowledged, "that under the Constitution no power is lodged anywhere to establish a religion. This is not an attempt to establish a religion; it has nothing to do with anything of the kind. It relates to belief in God, in whom we sincerely repose our trust. We know that America cannot be defended by guns, planes, and ships alone. Appropriations and expenditures for defense will be of value only if the God under whom we live believes that we are in the right. We should at all times recognize God's province over the lives of our people and over this great Nation." *Engel v. Vitale*, 370 U.S. at 440 n.5, citing *U.S. Code Cong. and Adm. News*, p. 2341 (1954).

This Court mirrored Congress' reasoning when it stated in *Engel v. Vitale*, "There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance." *Engel v. Vitale*, 370 U.S. at 435-36 n. 21.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals for the Ninth Circuit should be reversed.

Respectfully submitted,

Rebecca O'Dell Townsend
Haas, Dutton et al.
1901 N. 13th St., Ste. 300
Tampa, FL 33605
(813) 253-5333

Mathew D. Staver
(Counsel of Record)
Erik W. Stanley
Anita L. Staver
Joel L. Oster
Rena M. Lindevaldsen
LIBERTY COUNSEL
210 E. Palmetto Ave.
Longwood, FL 32750
(407) 875-2100